

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN E. FINLEY, SR. TRUST,)	
)	
Petitioner,)	BK No. 98-60448
)	
v.)	Civil No. 98-4363-JPG
)	
DONALD HOAGLAND, Trustee,)	
)	
Respondent.)	

ORDER

Before the Court is petitioner the John E. Finley, Sr. Trust's ("the Finley Trust"), Notice of Appeal of the Bankruptcy Court's Order approving sale of the Finley Trust's property. (Doc. 64, Bankr. No. 98-60448). Also before the Court is the respondent's motion to dismiss the appeal. (Doc. 6, Civil No. 98-4363)¹

I. BACKGROUND

On January 15, 1999, this Court denied an earlier motion to dismiss the appeal and ordered the Finley Trust to file its appeal brief on or before February 5, 1999. (Doc. 3). No brief was filed, and, on February 16, 1999, the Court ordered the Finley Trust to show cause why its appeal should not be dismissed. (Doc. 4). No response to that Order was filed, and, on March 11, 1999, the Court ordered the appeal dismissed

¹All document numbers refer to the Civil Case No. 98-4363, unless otherwise noted.

without prejudice. (Doc. 5). Therein, the Court noted that the record demonstrated a pattern of dilatoriness and multiple failures to comply with deadlines. Accordingly, the Clerk of Court closed the case.

Apparently before receiving a copy of the Order dismissing the appeal, the respondent moved to have the appeal dismissed on two grounds: 1) for failing to obey the Court's orders; and 2) because the appeal is moot. (Doc. 6). The Finley Trust responded to that motion, explaining that it has never responded to any of the Court's orders because none were received. (Doc. 8). It also objects to the appeal being denied as moot.

II. DISCUSSION

A. Failure to Comply with Court Orders

The Court has discovered that the Finley Trust has not been sent any of the orders entered by this Court. The Finley Trust was represented by counsel in the Bankruptcy Court, but is proceeding on appeal without representation. Due to an oversight by the Court, this change in representation was not noted, and all documents have continued to be sent only to the Finley Trust's former attorney.

Based on this information, the March 11, 1999, Order dismissing this appeal for failure to comply with the Court's orders is hereby **VACATED**. (Doc. 5). Similarly, the respondent's

motion to dismiss for failure to obey orders is **DENIED**. (Doc. 6). The Clerk of Court is **DIRECTED** to mail all documents currently on file in the civil record of this case directly to the Finley Trust at 1302 Lexington Street, Lawrenceville, Illinois 62439, and to note that the Finley Trust is appearing *pro se* in this matter.

B. Mootness

The respondent also argues that this appeal should be dismissed as moot. He claims that the Finley Trust failed to obtain a stay of the Order approving sale pending appeal and, thus, the sale closed and a bona fide purchaser has taken possession. Because the Court cannot return property that has been sold to a good faith purchaser, the respondent argues that the case should be dismissed. The Finley Trust objects, stating that no bond was requested by the respondent and that it cannot respond to the claim that the property was sold to a bona fide purchaser because "we were deprived [sic] of our due process."

Sale to a good faith purchaser is final and the courts will not annul it. In re Lloyd, 37 F.3d 271, 273 (7th Cir. 1994). That is, once the property is sold to a good faith purchaser, the courts cannot return that property to a party challenging the sale. Thus, a party appealing an order approving a sale of property to a good faith purchaser must obtain a stay of the

sale pending appeal, otherwise the appeal will be rendered moot upon closing of the sale. 11 U.S.C. § 363(m) (West 1993); In re Andy Frain Services, Inc., 798 F.2d 1113, 1125 (7th Cir. 1986).

The Seventh Circuit has consistently held that "failure to obtain a stay of a sale to a good faith purchaser renders an appeal from the order authorizing and confirming the sale moot." Andy Frain, 798 F.2d at 1125 (citing In re Vetter Corp., 724 F.2d 52, 56 (7th Cir. 1983)); see also Lloyd, 37 F.3d at 273 (7th Cir. 1994) (finding those issues related to return of the property moot because the appellant had not obtained a stay of the order approving sale); In re Memorial Estates, Inc., 950 F.2d 1364, 1368-69 (7th Cir. 1992) (finding arguments regarding property moot where appellant unsuccessfully sought a stay and failed to post a supersedeas bond). "This rule 'is in furtherance of the policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.'" Vetter Corp., 724 F.2d at 55-56 (internal citations omitted). Without this rule, the risks of purchasing bankrupt property would increase, the price bid for them would deteriorate, and creditors losses would escalate. In re Sax, 796 F.2d 994, 998 (7th Cir. 1986).

Before the appeal was filed, the Finley Trust attempted to

obtain a stay of the sale in the Bankruptcy Court, which was denied. (Docs. 54, 59, Bankr. No. 98-60448). Once the appeal was filed, the Finley Trust did not attempt to have the Order approving sale stayed pending the appeal. See BANKR. RULE 8005. The Finley Trust's apparent explanation for this failure is that no bond was requested by the respondent. However, the respondent is under no obligation to request a bond; rather, the Court may require the appellant to post a bond or other security to cover any loss to the purchaser. See BANKR. RULE 8005. Having failed to offer a credible explanation for failing to obtain a stay of the Order pending appeal, this appeal must be dismissed as moot if the property was sold to a good faith purchaser.

The requirement that a purchaser act in good faith, of course, speaks to the integrity of the purchaser's conduct in the course of the sale proceedings. "Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." In re Rock Industries Machinery Corp, 572 F.2d 1195, 1198 (7th Cir. 1978). No such flagrant misconduct has been alleged in this case. The Finley Trust's only objection to the claim that the property was sold to a good faith purchaser is that they were "denied due process" and,

thus, cannot address whether the property is now possessed by a good faith purchaser. The Court assumes that by "due process" the Finley Trust is referring to its contention on appeal that it was not given an opportunity to object to the notice of sale. However, this contention has nothing to do with the conduct of the purchaser at the sale and, thus, does not affect good faith.

The Court finds that the Finley Trust has failed to obtain a stay of the Order approving sale that it now appeals. The Court further finds that the sale was made to a good faith purchaser. Therefore, this appeal is moot. The motion to dismiss for mootness is **GRANTED**. (Doc. 6).

The appeal is hereby **DISMISSED AS MOOT**.

IT IS SO ORDERED.

DATED: March 29, 1999.

/s/ J. Phil Gilbert
Chief Judge, U.S. District Court